

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON, CHAIRWOMAN
SANDRA D. KENNEDY, COMMISSIONER
JUSTIN OLSON, COMMISSIONER
ANNA TOVAR, COMMISSIONER
JIM O'CONNOR, COMMISSIONER

IN THE MATTER OF THE IMPACT OF THE
CLOSURES OF FOSSIL-BASED
GENERATION PLANT ON IMPACTED
COMMUNITIES.

Docket No. E-00000A-21-0010

Joint Reply Comments

JOINT SIGNATORIES' RESPONSE TO STAFF REPORT AND PROPOSED ORDER

The undersigned organizations provide the following comments in response to Staff's Proposed Order in this docket.¹ Our organizations, representatives of which have participated in this proceeding since its inception in January 2021, including as members of the Commission-appointed task force on coal-impacted communities, have carefully reviewed Staff's recommendations and find them wholly inadequate for addressing the very real and very immediate needs of communities that already are, or soon will be, facing the harsh economic realities of having nearby coal-fired generating plants retired and coal mines closed.

This docket was established with the explicit purpose of providing the Commission with a sound and consistent policy framework to guide decision-making on coal-community transition (CCT), in particular with regard to utility responsibility for providing financial assistance and other resources necessary to aid communities both with immediate impacts in the wake of a plant closure, such as lost jobs and tax revenue, and the longer term task of economic rebuilding and diversification.

While there may be separate mechanisms such as state and federal funding potentially available to communities for community services, it is the Commission's regulatory oversight of investor-owned utilities that is of central importance to this docket. It is undisputed that the Commission has the authority to direct utilities to provide CCT support, and indeed, a number of recent decisions have firmly established that precedent. It is also clear that Arizona's utilities are willing to provide much-needed support as they have already offered assistance to CCT communities with transition through various grant opportunities created by the Bipartisan Infrastructure Law. Arizona Public Service (APS) has proposed a CCT package that would provide significant funding to help both Tribal and non-Tribal Arizona communities weather the disruption of having three major coal-fired power plants shut down (Navajo Generating Station, Cholla Power Plant, and Four Corners Power Plant)² and Tucson Electric

¹ Filed Sept. 28, 2022. <https://docket.images.azcc.gov/E000021402.pdf?i=1665426042748>

² As detailed in APS Rebuttal Testimony by Barbara Lockwood filed in Docket No. E-01345A-19-0236. Nov. 6, 2020. <https://docket.images.azcc.gov/E000009981.pdf?i=1665688138291>. Pages 19-24.

Power (TEP) also now readily acknowledges its CCT responsibilities to communities where it operates retiring coal facilities.³

The question this docket was created to establish is not whether but HOW the Commission should then oversee the provision of CCT support so that it is equitable, reasonable, and consistent. Despite this clear directive, Staff's recommendations fail to provide any meaningful methodology for guiding decisions on utility assistance to coal-impacted communities. It ignores voluminous input and recommendations that have been provided by many stakeholders since the docket's inception 21 months ago. ***Despite an additional year of work funding by taxpayers, the seven recommendations put forth by Staff are substantively no different than the same inadequate recommendations that Staff made in July 2021.***⁴ In fact, the reports presented by Staff both last summer and immediately preceding the Proposed Order fail to consider any recommendations brought forward by the members of its own subgroups and disregards the Commission's original request of a CCT policy framework.

We are very concerned that Staff's Proposed Order leaves coal communities and the people of Arizona with more empty promises after so many cities, towns, counties, NGOs, state agencies, businesses, schools, and many more invested months of work into assisting the Commission in its pursuit of developing a sound and equitable coal community transition policy. The Proposed Order lacks policy recommendations while dismissing substantial portions of the docket's evidentiary record rather than allowing the record to speak for itself. Staff's Report and Proposed Order ignores the countless hours of work devoted by stakeholders and the Commission through hearings, task force meetings, and town halls. ***Because Staff's report does not adequately include, nor reflect the entirety of the evidence in the docket, we respectfully request the Commission to reject the Proposed Order and replace it with the alternatives suggested herein.***

The need for coal community support grows stronger every day. In the past five years, six units at four coal-fired power plants owned by Arizona utilities have closed, all of them far ahead of schedule. Three years ago, the largest power plant in the West, operated and majority-owned by Arizona utilities, shut down more than two decades earlier than planned, leaving a gaping hole of tens of millions of dollars in the annual budgets of Navajo, Hopi, and rural northern Arizona communities. And within the next decade all but one or two of the nine coal-fired plants owned or operated by Arizona utilities will close, all on accelerated timeframes. These closures will affect several thousand workers, cut hundreds of millions of dollars from local, regional, and state budgets, and leave communities scrambling to re-invent their economies.

Staff's Timeline Misrepresents the Events in This Proceeding

The Proposed Order submitted by Staff for the Commission review does not reflect the full scope of proceedings in Docket No. E-00000A-21-0010, omitting relevant and important details that could have otherwise shaped the recommendations. Strangely, Staff's background summary in the Proposed Order begins on Nov. 9, 2021 with Decision No. 78317, ignoring the entirety of the proceeding from its initiation to that point as if it never happened. Between Jan. 17, 2021 and Decision No. 78317, numerous stakeholders and individuals, including our organizations, submitted substantive comments and fully participated in this docket's proceedings. Commenters included five representatives from the

³ See, for example, TEP's Post-Hearing Brief in Docket No. E-01933A-19-0028.
<https://docket.images.azcc.gov/E000007620.pdf?i=1665779900953>. Pages 101-103.

⁴ Staff report, filed July 28, 2021. <https://docket.images.azcc.gov/E000014847.pdf?i=1665433272162>

Arizona Legislature,⁵ labor representatives,⁶ religious organizations,⁷ the President and Vice President of the Navajo Nation,⁸ the Chairman of the Hopi Tribe,⁹ and the former Chairman of the Hopi Tribe, as well as responses to data requests from Arizona Public Service,¹⁰ Tucson Electric Power¹¹ and Salt River Project,¹² officials from impacted school districts,¹³ at least five dozen individuals from coal-impacted communities who participated in a series of town hall meetings during the spring and summer of 2021,^{14, 15, 16} and dozens of other individuals.

While those comments were summarized in Staff's 2021 summary report, there is no indication they were given any consideration in Staff's Proposed Order. The entire first year of the CCT proceedings is brushed aside as if it didn't happen. It is unclear why Staff ignored these comments since following the submission of the July 2021 Staff Report,¹⁷ the Commission has made no decisions and taken no action that should preclude any of the public input from the first year of the proceeding from being considered.

Staff's Proposed Order Continues to Ignore Utility Responsibility for CCT Support

Throughout this proceeding, many commenters, including our organizations, have repeatedly emphasized the need for the Commission to focus its attention on developing a framework regarding utility responsibility for a core portion of CCT support. Indeed, this point also has been emphasized by the Commission. It was at the very heart of Decision No. 77856 that led to the creation of this docket, with the Commission ordering that CCT components of TEP's prior rate case (Docket No. E-01933A-19-0028) be rolled into a Phase II proceeding "for receipt of additional evidence and testimony regarding the findings, conclusions, and recommendations in the generic docket."¹⁸

In APS's most recent rate case, the issue of utility responsibility was precisely what led the Commission to extend the CCT Generic Docket for another round of input. The Commission made it abundantly clear in Decision No. 78317 that it viewed "the Generic Transition Docket to be an appropriate venue to flesh out additional information concerning ***APS's and other utilities' equitable obligations to coal-impacted communities and the extent to which those obligations should be covered by customer as opposed to shareholder funds***".¹⁹

Yet, despite the Commission's clear direction and more than a year of input in which utility responsibility for coal community assistance was a defining part of the discussion, Staff's Proposed Order dismisses the idea of utility responsibility and any determination about how assistance should be shared between customers and shareholders with a single sentence that lacks any analytical justification: "Staff

⁵ Comments filed Oct. 1, 2021. <https://docket.images.azcc.gov/E000015967.pdf?i=1665433272162>.

⁶ Comments filed April 30, 2021. <http://docket.images.azcc.gov/E000013269.pdf?i=1665433272162>; July 9, 2021. <http://docket.images.azcc.gov/E000014592.pdf?i=1665433272162>; and Sept. 9, 2021. <https://docket.images.azcc.gov/E000015540.pdf?i=1665433272162>.

⁷ Comments filed Aug. 9, 2021. <https://docket.images.azcc.gov/E000015050.pdf?i=1665433272162>.

⁸ Comments filed July 26, 2021. <http://docket.images.azcc.gov/E.000014801.pdf?i=1665433272162>.

⁹ Comments filed July 29, 2021. <https://docket.images.azcc.gov/E000014850.pdf?i=1665433272162>.

¹⁰ Comments filed July 9, 2021. <https://docket.images.azcc.gov/E000014575.pdf?i=1665433272162>.

¹¹ Comments filed July 9, 2021. <http://docket.images.azcc.gov/E000014580.pdf?i=1665433272162>.

¹² Comments filed July 9, 2021. <https://docket.images.azcc.gov/E000014586.pdf?i=1665433272162>.

¹³ Comments filed July 7, 2021. <http://docket.images.azcc.gov/E000014514.pdf?i=1665433272162>.

¹⁴ Comments filed Sept. 30, 2021. <https://docket.images.azcc.gov/E000015928.pdf?i=1665433272162>.

¹⁵ Comments filed June 25, 2021. <http://docket.images.azcc.gov/E000014215.pdf?i=1665433272162>.

¹⁶ Comments filed July 29, 2021. <https://docket.images.azcc.gov/E000014850.pdf?i=1665433272162>.

¹⁷ Submitted into the docket on July 28, 2021. <http://docket.images.azcc.gov/E000014847.pdf?i=1665433272162>.

¹⁸ Decision No. 77856. Dec. 31, 2020. <https://docket.images.azcc.gov/0000202798.pdf?i=1665523772391>. Page 172, Lines 13-15.

¹⁹ Decision No. 78317. Nov. 9, 2021. <https://docket.images.azcc.gov/0000205236.pdf?i=1665684397930>. Page 173, Lines 27-28, Page 174, Lines 1-2.

recommends that APS ratepayers not be assessed an added surcharge at this time to reflect the provisions of the MOU or any other items raised in this proceeding.”

Staff’s Proposed Order Is Contradictory

The recommendations made by Staff are self-contradictory. The Proposed Order states that “Arizona Public Service Company shall honor the Memorandum of Understanding or any other tribal payment obligations or commitments made.”²⁰ Immediately following that, the Proposed Order states that “Arizona Public Service Company ratepayers shall not be assessed an added surcharge at this time to reflect the provisions of the Memorandum of Understanding or any other items raised in this proceeding.” It is not possible for both orders to be enacted. The MOU between APS and the Navajo Nation does not just include a dollar amount. The MOU also spells out a cost recovery mechanism for how CCT assistance will be provided by both ratepayers and customers.

Staff’s Proposed Order Oddly Fixates on APS and Four Corners Power Plant

It is worth reiterating that this docket was created as a result of the Commission’s order in TEP’s 2019 rate case, and was established to inform future Commission decisions around coal community transition writ large for both TEP and APS. It is thus puzzling why Staff’s order fixates so intently on APS and in particular, on its ownership stake in Four Corners Power Plant.

With the exception of requiring TEP to provide economic impact studies and to docket proposals for repurposing of plant infrastructure, the Proposed Order put zero responsibility on TEP for coal community transition. And beyond the remaining units at Four Corners Power Plant, there are 20 other units at eight coal-fired power plants either owned or operated by Arizona utilities. Five of those plants are located in Arizona (Navajo Generating Station, Cholla Power Plant, Coronado Generating Station, Springerville Generating Station and Apache Station). Six units at three plants (Navajo, Cholla and San Juan Generating Station) have been permanently closed down in the past three years, the latter just within the last month. Another three units at two plants (Cholla and Craig) will be retired within the next three years, and a fourth within five years (Hayden). These facilities are located in rural communities that depend greatly on them as economic drivers. Yet, Staff’s Proposed Order effectively pretends that these plants and communities don’t exist, ignoring the looming retirements and the painful economic impacts that come with closure. It is a grave disservice to these rural areas that have sacrificed so much to power Arizona’s economy and future prosperity.

Staff’s Report Makes No Mention of Securitization as a Potential Tool for CCT Funding

In 2020, New Mexico passed the Energy Transition Act (ETA), which among other things, created a policy framework for securitization, which is essentially a refinancing mechanism analogous to mortgage refinancing that can provide significant funding through cost savings to support coal community transition. In the case of the ETA, Public Service of New Mexico’s (PNM) securitization of undepreciated assets in San Juan Generating Station generated a \$40 million fund to support coal community transition for northwestern New Mexico communities harmed economically by the closure of the plant.

As part of this proceeding, the Commission invited officials from the New Mexico Public Regulation Commission to provide their insights on securitization as a powerful tool for assisting coal-impacted communities in their efforts to rebuild in the wake of losing such an important economic base. Despite the potential for securitization to play a key role in CCT while also lowering customers’ bills, Staff’s report does not mention the comments New Mexico officials provided, nor does it provide any analysis of the policy landscape for securitization in Arizona. If adhered to, Staff’s failure to consider securitization as a mechanism for CCT assistance is a significant lost opportunity.

²⁰ Page 32, Lines 8-9.

Proposed Recommendations

With the above factors in mind, We provide the following responses to Staff's recommendations:

Recommendation No. 1 – Staff believes APS should honor the MOU or any other tribal payment obligations or commitments made.

Our organizations agree that utilities bear a core responsibility for CCT support and that when agreements are made they must be honored in their entirety. Additionally, because the Commission has an important role as gatekeeper for ensuring that CCT agreements are honored, we recommend that Staff's Proposed Order include a stipulation that the Commission approve such MOUs.

Recommendation No. 2 – Staff recommends that APS ratepayers not be assessed an added surcharge at this time to reflect the provisions of the MOU or any other items raised in this proceeding.

Staff provides no statutory, regulatory, or constitutional analysis to support this conclusion. Staff simply states its opinion without exploring either the benefits or liabilities of its proposed recommendations. As noted throughout this proceeding, a number of past ACC decisions have already explicitly acknowledged that utilities have a corporate responsibility to the communities where they operate facilities. Both utility customers and company shareholders have benefited, through low-cost electricity and consistent profits, from the sacrifices made by these communities and the Commission now has a solid precedent for making sure resources are available to mitigate the impacts of plant closures. To simply dismiss that without any logical basis is a disservice.

The Generic docket was created to answer how the Commission should carry out its decision-making about the precedent it has firmly established on CCT. This proceeding does absolutely nothing to assist in that endeavor. Given that some communities are still feeling the impacts of coal plant closures that happened three years ago, some are facing those impacts now, and others soon will be, the Commission cannot wait any longer to provide CCT assistance. The best model it has in front of it is the CCT package agreed to by APS and the Navajo Nation. This package is just, equitable and would have minimal impact on ratepayers as detailed in APS testimony.²¹ Therefore, we recommend that the Commission reject Staff's proposed order on this matter and instead immediately approve the remainder of the APS CCT package not included in Decision No. 77856. Furthermore, we recommend that the Commission use the APS CCT package as a template for similar CCT support by TEP to communities where it operates and will be retiring coal facilities. The Commission should also incorporate the Hopi Tribe's requests into its recommendations on both APS and TEP.

Recommendation No. 4 – Staff recommends that APS look for grant opportunities that may be available to the Navajo Nation and Hopi Tribe to assist with the upgrading of infrastructure and living conditions in tribal areas. APS should docket its findings within 120 days of a Decision in this case.

Our organizations fully support an all-of-the-above approach to assisting coal-impacted communities as they confront the deep economic impacts of losing the coal plants that serve as major employers and sources of tax revenue. A number of efforts are already underway to accomplish exactly what the Staff recommendations propose, including a comprehensive approach by the federal Interagency Working

²¹ See the Navajo Nation response to Commission Staff's May 10, 2022 memorandum. May 31, 2022. <https://docket.images.azcc.gov/E000019468.pdf?i=1665788702932>. Page 4.

Group on Coal Community Transition, which has compiled a database of more than 150 grant and loan opportunities totaling \$196 billion that may be available for CCT support.²²

As we have testified²³, however, as welcome as all sources of CCT support may be, that does not and should not change the core focus of the Commission's regulatory oversight of utility responsibility for their contribution to helping coal-impacted communities. ACC proceedings are not the appropriate venue for hashing out CCT issues outside the Commission's purview. To the extent that this recommendation may be redundant with efforts that are already taking place, we support this order with the stipulation that APS and TEP go beyond simple list-building and focus on CCT opportunities in which they can partner with communities and organizations to assist in their transition. This recommendation also should include both Tribal and non-Tribal communities.

Recommendation No. 5 – Since this is a state-wide issue, Staff recommends that APS seek the assistance of the Legislature and the governor to secure additional funding to assist the tribal communities.

Inasmuch as we would like to see the Arizona legislature and governor, as part of an all-of-the-above approach, take an interest in CCT issues and contribute to the well-being and economic health of rural and Tribal communities that are or soon will be reeling from coal plant closures, it is simply outside the scope of this proceeding and Commission's authority to order utilities seek their assistance. It is also quite clear that the current governor and legislature have shown no interest in helping coal-impacted communities. We recommend that the Commission reject this proposed order.

Recommendation No. 6 – Staff believes that APS and/or TEP should provide all economic impact studies performed at least two years before APS and/or TEP commences early closure of a fossil-based generation plant to demonstrate the economic impact on the customers.

Understanding both the direct and indirect impacts of retiring coal facilities, especially in places where they serve as the main economic base, is critical to formulating sound policy to assist these communities. As with Recommendation No. 4 above, some of this is already happening. TEP and SRP have already submitted an economic analysis into this docket detailing the expected economic impacts of closing the Springerville and Coronado power plants.²⁴

We support this recommendation but suggest that it should go beyond simply providing a study since it is entirely possible that no studies exist. We recommend that the final order be revised to **require** APS and TEP to conduct such analyses, not just provide them, and that a study be conducted for each and every plant where the two utilities hold an ownership stake, both in Arizona and in other states. Furthermore, to ensure that such studies are as current as possible, they should be conducted under the auspices of the current rate case proceedings.

Recommendation No. 7 – If the determination is made to proceed with closing the FCPP early, APS should, at least four years prior to the closing of the plant, begin offering training and educational opportunities for those affected by the early closure of the plant.

²² See <https://energycommunities.gov/>.

²³ See joint stakeholder comments filed on July 15th, 2022.

<https://docket.images.azcc.gov/E000020187.pdf?i=1665784149371>

²⁴ "Estimating the Impacts of Reduced Operations at, and the Closures of, Springerville and Coronado Generating Stations." Submitted July 22, 2022. <https://docket.images.azcc.gov/E000020266.pdf?i=1665688569522>.

As we have noted, it's not at all clear why Staff's Proposed Order is fixated just on FCPP when there are eight coal-fired power plants owned by utilities under the Commission's jurisdiction, All but one of those is being retired early, and three of them are operated by APS or TEP.

We recommend that this Order be revised to include all coal facilities owned or operated by APS or TEP. For the three plants operated by them, this recommendation can stand as drafted. For the plants where APS and TEP are minority owners and not the operator, this recommendation should require the utilities to begin discussions with the majority owner and operator about how their ownership stake can support such efforts.

Additional Recommendations

1. The Commission should direct TEP to negotiate a CCT package with impacted communities that is commensurate with the APS CCT proposal and the requests from the Hopi Tribe and file it for the Commission's review as part of Phase II of Docket No. E-01933A-19-0028. At a minimum, the agreement should include sizable financial support for: workers; for replacement tax revenue for a period up to 10 years; economic diversification and redevelopment efforts.
2. The Commission should require APS and TEP to site a percentage of replacement power projects in or near communities impacted by coal closures. Furthermore, provisions should mandate that during the development and implementation of these projects, all reasonable efforts should be made to utilize unionized labor and displaced workers, and that to the extent possible, businesses and individuals located in impacted communities are utilized for third-party services and materials.
3. The Commission should require both APS and TEP to provide funding and resources to convene stakeholder groups in each community that has already or will be impacted by the early closure of a coal plant or mine. Each task force should be tasked with developing a CCT action plan outlining the utility's obligations to support the impacted community.
4. The Commission should direct APS and TEP to conduct a comprehensive review of all company policies and programs to incorporate provisions to support the economic development of coal-impacted communities, including but not limited to line extension policies, energy efficiency programming, water rights, land restoration/remediation, transmission agreements, etc.

Because Staff's report does not adequately include, nor reflect the entirety of the evidence in the docket, we respectfully request the Commission to reject the Proposed Order and replace it with the alternatives suggested herein.

We respectfully submit these comments on October 14th, 2022.

Nicole Horseherder
Executive Director
Tó Nizhóní Ání

Mike Eisenfeld
Energy & Climate Program Manager
San Juan Citizens Alliance

Ben Nuvamsa
Former Chairman, Hopi Tribe
Representing Black Mesa Trust

Sandy Bahr
Director
Grand Canyon Chapter,
Sierra Club

Alex Routhier, PhD
Senior Clean Energy Policy Analyst
Western Resource Advocates

Caryn Potter
Arizona Representative
Southwest Energy Efficiency Project